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October 15, 2008

VIA ELECTRONIC MAIL: Green.Communities@MassMail.State.MA.US

Mr. Philip Giudice
Commissioner
Massachusetts Department of Energy Resources
100 Cambridge Street
Boston, MA 02114

RE: Section 32 of chapter 169 of Acts of 2008; *Green Communities Act* – Class I RPS

Dear Commissioner Giudice:

Pursuant to the request for comments issued by the Massachusetts Department of Energy Resources (“DOER”) at the Stakeholder Forum on the Renewable Portfolio Standard held on September 29, 2008, and in furtherance of the requirements contained in the above referenced section of the Green Communities Act, the New England Power Generators Association, Inc. (“NEPGA”) hereby respectfully files these comments.¹ NEPGA represents sixteen companies and approximately 25,000 megawatts (or over 80 percent) of the generation in New England, and approximately 12,000 megawatts in Massachusetts.

As a part of the Green Communities Act, signed into law by Governor Patrick on July 2, 2008, the DOER has opened a stakeholder process to implement §32 of chapter 169 of the Acts of 2008 - Green Communities Act - as that provision altered G.L.c 25A §11F pertaining to the existing Renewable Portfolio Standard (“RPS”) to establish three separate standards -- a standard for “Class I” renewables, a standard for “Class II” renewables, and an alternative energy portfolio standard (AEPS). The original Massachusetts RPS was created in Chapter 164 of the Acts of 1997.² Subsequently, the DOER adopted RPS regulations that required all retail electricity providers in the state to utilize new renewable-energy sources for at least 1% of their power supply in 2003, increasing to 4% by 2009. After 2009, the RPS requirements increase

¹ The views expressed in these comments do not necessarily represent the positions of each of NEPGA’s members. In addition, nothing in these comments should be deemed to waive any rights that NEPGA or any of its members may have to challenge the administrative, procedural or substantive validity of the proposed regulations.

² See, An Act Relative To Restructuring The Electric Utility Industry In The Commonwealth, Regulating The Provision Of Electricity And Other Services, And Promoting Enhanced Consumer Protections Therein.

by one percent per year until the DOER suspends the annual increase.³ Beginning January 1, 2009, only “Class I” renewables are eligible to meet the RPS, as those resources are now defined.⁴

RPS requirements produce a number of benefits, such as reducing emissions of air pollutants and greenhouse gases, increasing diversity and security of energy supply, and reducing price volatility in energy markets. RPS requirements also promote economic development and create new jobs related to manufacturing, installing, and servicing RPS-eligible equipment and facilities within the competitive electricity markets. However, in order to continue to incent private investment in new renewable energy infrastructure technology to accelerate the benefits that improve the environment, Massachusetts must maintain a business climate that allows for sound and prudent investments through a consistent regulatory environment. With that goal in mind, NEPGA has provided the following answers to the questions presented:

I. Comments of NEPGA

1. What should the Alternative Compliance Payment (ACP) amount be for Class I, and how should it be calculated?

Alternative compliance payments (ACP) provide a mechanism under which an electric supplier or distributor can pay a fee to the state if they are unable to procure a sufficient supply of RECs. The ACP should be carefully calculated to encourage the development of renewable projects without burdening consumers with high energy costs. Payments to an ACP fund are usually used by the state to generate an additional revenue stream for certain technologies and to promote the development of renewable projects. For example, in Massachusetts, the ACP provides revenue to the Massachusetts Technology Collaborative which then uses the proceeds to fund clean energy and green buildings and infrastructure programs. Many of the qualifying renewable energy projects that have been developed since 1997 were only viable as a result of the additional revenue stream produced by the ACP.

Resultantly, the ACP should remain consistent with prior provisions and escalations to maintain the market dynamics and ensure a consistent revenue stream to eligible renewable energy installations. The ACP is currently calculated as follows:

The ACP Rate shall be \$50 dollars per MWh for Compliance Year 2003. For each subsequent Compliance Year, the Division shall publish the ACP Rate by January

³ 225 CMR 14.07

⁴ See, G.L.c 25A §11F. These resources include: photovoltaics (PV); solar thermal-electric energy; wind energy; ocean thermal, wave or tidal energy; fuel cells utilizing renewable fuels; landfill gas; energy generated by certain new hydroelectric facilities, or certain incremental new energy from increased capacity or efficiency improvements at existing hydroelectric facilities; low-emission advanced biomass power conversion technologies using fuels such as wood, by-products or waste from agricultural crops, food or animals, energy crops, biogas, liquid biofuels; marine or hydrokinetic energy; and geothermal energy.

31 of the Compliance Year. The ACP Rate shall be equal to the previous year's ACP Rate adjusted up or down according to the previous year's Consumer Price Index.⁵

Accordingly, the ACP for Class I resources should equal the 2008 RPS ACP plus the previous year's Consumer Price Index.

However, prudent economic and energy policy dictates that the DOER should recognize that the revenue from the ACP is used to subsidize resources that could not otherwise survive on market revenues and are ultimately paid by the electric consumer. RPS revenues are only one of the cost adders that currently burden the consumer cost of electricity and, as such, should be limited. Accordingly, NEPGA recommends placing a reasonable ceiling on the ACP, not to exceed a final cost of \$75.

2. What new or modified criteria should be required for any of the specified eligible technologies or fuels?

The criteria for Class I qualification should not exceed the existing statutory language or intent.⁶ The DOER needs to provide regulatory certainty and policies that encourage development of renewable energy resources, as well as to ensure the continued economic well-being of resources developed under the original RPS. Energy projects are planned years in advance and involve a substantial financial commitment on the part of developers and financiers. With so much at stake, investors need to be confident that governments aren't going to change the rules in the middle of the development process.

3. What should be the minimum percentage of megawatt hour (MWh) sales for on-site generation that is up to 2MW, located within Massachusetts, and began commercial operation after December 31, 2007? What should be the appropriate ACP rate for this technology?

Section 32 of chapter 169 of Acts of 2008 adds a new G.L.c 25A §11(g) that provides, *inter alia*, as follows:

In satisfying its annual obligations under subsection (a), each retail supplier shall provide a portion of the required minimum percentage of kilowatt-hours sales from new on-site renewable energy generating sources located in the commonwealth and having a power production capacity of not more than 2 megawatts which began commercial operation after December 31, 2007, including, but not limited to, behind the meter generation and other similar categories of generation determined by the department...*(emphasis added)*

⁵ 225 CMR 14.08(4)(a)(2)

⁶ See, G.L.c 25A §§ 11F(b) and 11F(c) as revised by Section 32 of chapter 169 of Acts of 2008

Commissioner Giudice

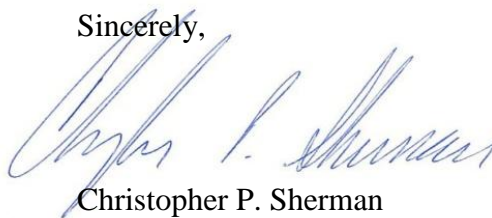
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As a matter of clarification, NEPGA interprets this provision to provide for a sub-class of the Class I renewables that are provided for in G.L.c. 25A §11(g), as opposed to an additional class of renewable energy. In furtherance thereof, the REC that is generated by this §11(g) should be priced similar to the existing Class I REC and should be comprised of a percentage of the §11(g) RPS that serves to incent this market without increasing the financial burden to the consumers.

NEPGA appreciates this opportunity and requests that the DOER consider its comments as submitted herein. Please contact me at the information provided above if I can provide any further information.

Sincerely,

A handwritten signature in blue ink, appearing to read "Chris P. Sherman", is written over a light blue horizontal line.

Christopher P. Sherman
General Counsel